

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

ANTONIO BREAKMAN,)	3:10-cv-00633-ECR-VPC
)	
Plaintiff,)	
)	
vs.)	<u>Order</u>
)	
MICHAEL KOEHN,)	
)	
Defendant.)	
)	

On December 8, 2011, the Magistrate Judge filed a Report and Recommendation (#49), recommending that Defendant's Motion for Summary Judgment (#35) be denied because Defendant's exhibits were not authenticated. On December 23, 2011, Defendant filed an Objection (#50) to the Report & Recommendation (#49).

Defendant submitted medical records as evidence in support of his Motion for Summary Judgment (#35). Defendant contends that the declarations attached to his Motion (#35) by doctors stating that the records are kept in the ordinary course of business at the Nevada Department of Corrections ("NDOC") are sufficient to authenticate the medical records. The declarations also state that the doctors are NDOC employees who have personally examined and are familiar with the exhibits. These stated qualifications are inadequate to meet the requirements of the Federal Rules of Evidence. Federal Rule of Evidence 803(6) provides that records of a regularly conducted activity may be admitted if the conditions of such activity are "shown by the testimony of the custodian or other

1 qualified witness, or by a certification." These exhibits, however,
2 were not accompanied by affidavits submitted by custodians or other
3 qualified persons.

4 The Report and Recommendation (#49) is well-taken, and is
5 therefore **APPROVED AND ADOPTED**. Defendant's Motion for Summary
6 Judgment (#35) is **DENIED**. Defendant may, however, resubmit the
7 Motion for Summary Judgment (#35) with properly authenticated
8 evidence within twenty-eight (28) days of the date of entry of this
9 Order.

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11 DATED: February 10, 2012.

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UNITED STATES DISTRICT JUDGE

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